as it affects the remaining lands described as follows:

New Mexico Principal Meridian

T. 13 N., R. 11 W.,
Sec. 3, lots 1 and 2, S½NE¼, and S½;
Sec. 11;
Sec. 13, SE¼ and S½N½.

The areas described aggregate 1,442.14 acres in McKinley County.

2. The lands described in paragraph 1 are within an overlapping withdrawal, Public Land Order No. 2198, which withdrew lands to permit disposal of the lands to the Navajo Nation through land exchange, and thus remain withdrawn from settlement, sale, location, or entry under the general land laws, including the mining and mineral leasing laws, but remain open to exchange under the Act of March 3, 1921.

Dated: September 26, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–24669 Filed 10–4–94; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket RSOR–6; Notice No. 39]

RIN: 2130–AA81

Alcohol testing; Amendments to Alcohol/Drug Regulations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final Rule; Corrections.

SUMMARY: FRA issues a supplementary rule correcting two of the amendatory instructions contained in its February 15, 1994 final rule implementing alcohol testing [59 FR 7448].

EFFECTIVE DATE: October 5, 1994.

ADDRESSES: Any petition for reconsideration should be submitted in triplicate to the Docket Clerk, Docket No. RSOR–6, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, S.W., room 8201, Washington, D.C., 20590.

FOR FURTHER INFORMATION CONTACT: D. Lamar Allen, Alcohol and Drug Program Manager (RRS–11), Office of Safety, FRA, Washington, D.C. 20590 (Telephone: (202) 366–0127) or Patricia V. Sun, Trial Attorney (RCC–30), Office of Chief Counsel, FRA, Washington, D.C. 20590 (Telephone: (202) 366–4002).

SUPPLEMENTARY INFORMATION: This rule contains only editorial corrections. Therefore, good cause exists under the provisions of 5 U.S.C. 553(d)(e) to warrant an expedited effective date.

Corrections

In the rule document beginning on page 7448 in the issue of Tuesday, February 15, 1994 make the following corrections:

1. On page 7461, amendatory instruction 16 should read "Section 219.209 is amended by revising the last sentence of paragraph (a)(1); and by adding a new paragraph (c), as follows:".

2. On page 7465, amendatory instruction 42 should read "Part 219 is amended by adding a new section 219.801 to Subpart I as follows:".

Issued in Washington, D.C. on September 29, 1994.

S. Mark Lindsey,

Chief Counsel, Federal Railroad Administration.

[FR Doc. 94–24576 Filed 10–4–94; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 921058–4257; I.D. 090892B]

RIN 0648–AD44

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements a regulatory amendment to establish standard groundfish product types and standard product recovery rates (PRRs) for purposes of managing the groundfish fisheries off Alaska and specify certain product types and PRRs that may be used to calculate round-weight equivalents of pollock for purposes of calculating amounts of pollock roe that may be retained onboard a vessel during the pollock fishery. These actions are necessary to facilitate enforcement of existing regulatory measures and to implement a statutory prohibition against the wasteful use of pollock by stripping roe (eggs) from female pollock and discarding female and male pollock carcasses without further processing, commonly known as pollock roe stripping. The intended effect of this action is to promote the purposes and policies of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

EFFECTIVE DATE: November 4, 1994.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel).

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI) is managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan (FMP) for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Act and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

An explanation of, and reasons for, the establishment and specifications of standard product types and standard PRRs are contained in the notice of proposed rulemaking (58 FR 44643, August 24, 1993). The notice invited comments through September 23, 1993. It also proposed a regulatory amendment to reduce the proportion of pollock roe that may be retained onboard a vessel while participating in the directed pollock fishery. That regulatory amendment has already been implemented by a final rule (59 FR 14121, March 25, 1994). Six letters of comments were received that addressed standard product types and standard PRRs. They are summarized and responded to in the Comments Received section, below.

Changes in the Final Rule From the Proposed Rule

Table 2 is redesignated as Table 1 in 50 CFR 672.20(j)(1), (2) and (3)(i) and (3)(ii).

The newly designated Table 1 in 50 CFR 672.20(j)(2) is revised as follows.

1. Product codes and standard PRRs are established for rex sole in the GOA to accommodate a new target species category at 50 CFR 672.20(a) resulting from 1994 groundfish specifications.

2. The standard PRR for rockfish fillets/no skin (code 22) is changed from 0.35 to 0.33, and the standard PRR for sculpins, headed & gutted with roe (code 4) is changed from 0.88 to 0.87. These changes are insignificant and are made to reflect information contained in the literature for these product types.

3. A standard PRR for pollock surimi of 0.14 was proposed. That rate does not reflect seasonal variations experienced in this product. Seasonal variations are caused by changes in the physical condition of pollock flesh during the spawning season. This season generally occurs from January through June, followed by a recuperation period. Starting in July, the condition of pollock flesh improves, becoming optimum during the late summer months. For this reason, the BSAI pollock non-roe season was changed by regulation from June 1 to August 15, beginning in 1993.

To investigate seasonal differences in pollock products, NMFS reviewed data from the 1993 pollock roe and non-roe seasons, which occurred January 20–March 8 and August 15–September 22, respectively, for the "offshore component." NMFS also reviewed data from the "offshore component" from the 1994 pollock roe season, which occurred January 20–February 18. These data contained estimates of total retained pollock catches as reported by NMFS observers and amounts of surimi produced from the retained pollock as reported by vessels. During the 1993 roe season, 20,934 metric tons (mt) of surimi were produced from a retained pollock catch of 134,558 mt resulting in a average PRR of 0.155. During the 1994 roe season, 23,267 mt of surimi were produced from a retained pollock catch of 144,134 mt, resulting in an average recovery rate of 0.161. During the non-roe season, 29,878 mt of surimi were produced from a retained pollock catch of 171,320 mt, resulting in an average recovery rate of 0.17.

From these data, NMFS has determined that sufficient information exists to demonstrate seasonal differences in surimi recovery rates. Therefore, NMFS is establishing a standard PRR of 0.16 for the period January through June and a standard PRR of 0.17 for the period July through December.

4. The standard PRR for pollock skinless/boneless fillets (product code 23) is revised from 0.22 to 0.21. This revision is based on results of recovery tests conducted by NMFS observers.

5. The target species category "flathead sole" had been proposed to be referenced in § 675.20(a), which was an error. It is now correctly referenced in § 672.20(a).

6. The target species category "other flatfish" had been proposed to be referenced in § 672.20(a), which was an error. It is now correctly referenced in § 675.20(a).

7. The standard PRR for Atka mackerel, headed and gutted western cut (code 7) is changed from 0.61 to 0.64, and the standard PRR for Atka mackerel, headed & gutted eastern cut (code 8) is changed from 0.64 to 0.61 to correct a transposition error in the proposed rule.

8. The product codes 95 for discards and 99 for dockside discards have been removed, because they serve no useful purpose.

Section 672.20(j)(3) is revised to limit the aggregate adjustments of any standard PRR during a calendar year that the Regional Director may make without providing opportunity for prior public comment to no more than 15 percent of the standard PRR specified for a preceding calendar year. Aggregate adjustments greater than 15 percent may be made after providing notice and opportunity for prior public comment.

Comments Received

NMFS received six letters of comments on the proposed rule. Some comments addressed standard PRRs for specific products (e.g., surimi and deep-skin fillets made from pollock). Other comments focused on concerns about being accountable for the standard PRRs that would be different from actual recovery rates.

Comment 1. A vessel that achieves an actual recovery rate for a product that varies from the standard PRR could be prosecuted for violating a directed fishing closure or Vessel Incentive Program (VIP) rate, or be subject to higher fees under the North Pacific Fisheries Research Plan (Research Plan), even though irrefutable evidence existed to demonstrate that the vessel's actual recovery rate was real.

Response. NMFS concurs that a vessel could be prosecuted as stated in the comment. A vessel may have to adjust the amounts of products retained onboard to comply with the regulations that depend on round-weight equivalents calculated from processed products. A vessel would not be in violation if it has amounts of products onboard that are consistent with standard PRRs. Although NMFS considered means by which a vessel could claim it was achieving a recovery rate that differed from a standard PRR at any particular time, NMFS does not have the ability to determine whether a vessel's claimed recovery rate was representative of its processing operations or whether it had claimed a particular recovery rate as a means of justifying amounts of fish onboard to avoid violations of directed fishing closures or VIP definitions, or being charged higher fees under the Research Plan.

Comment 2. A vessel that achieves higher recovery rate for a particular product receives no benefit under a program that uses standard PRRs, thereby discouraging the use of more efficient and productive equipment.

Response. Standard PRRs are used to determine the amount of fish caught because their use is the best practicable method of doing so available at this time. Economic incentives outside the regulatory management scheme exist for vessels to increase their product recovery efficiency. As overall fleet efficiency in producing any particular product increases, NMFS will revise the standard PRR for that product.

Comment 3. By establishing one standard PRR for each product form, the rule ignores seasonal, area, and vessel-by-vessel variation in actual recovery rates.

Response. NMFS has considered variation in determining that standard PRRs are necessary to enforce certain management measures. Where NMFS has been able to determine a variation in a PRR over a wide area or season, as in pollock used for surimi (See response to Comment 4, below.), a separate PRR is specified. NMFS does not have the means to account for vessel-by-vessel, seasonal, and area variations from a standard PRR that may occur at any particular time.

Comment 4. Proposed standard PRRs for certain products are inaccurate. These are listed as follows:

1. The standard PRR for pollock surimi of 0.14 is too low, given that data used by NMFS during the 1992 non-roe season reflected product recovery from small-sized pollock and that actual recovery rates achieved by vessels, by season, shows product recoveries that range from 0.12 to 0.30. Data from the 1993 fishery should be a more reliable source of information;

2. The standard PRR for deep skin pollock is too low, given that data submitted to NMFS suggest that the standard PRR is closer to 0.16 or even 0.18;

3. The standard PRR for headed-and-gutted Pacific cod is too low, given that other sources of published information indicate that the standard PRR should be in the range of 0.56–0.75 or 0.58–0.64; and

4. Other standard PRRs may be in error as well.

Response. With respect to the standard PRR for pollock surimi, NMFS

has reviewed 1993 production information on a seasonal basis and notes that the average recovery rate for the period January through June is 0.16 (see discussion under the section on Changes In the Final Rule From the Proposed Rule). The average recovery rate for the period July through December is 0.17. The final rule establishes these two recovery rates to accommodate seasonal differences.

NMFS has reviewed information with respect to PRRs for deep skin pollock and headed-and-gutted Pacific cod. Deep skin pollock is such a new product that few data exist to demonstrate the extent of annual variation. On the basis of information available, NMFS concludes that 0.13 is an appropriate standard PRR. With respect to headed-and-gutted Pacific cod, many independent observers' tests onboard vessels have demonstrated PRRs averaging 0.47 and 0.57, respectively, for eastern and western cut products made from Pacific cod. Other changes made to PRRs are as noted in the section on Changes In the Final Rule From the Proposed Rule for the reasons given. NMFS does not have information that indicates any of the other proposed standard PRRs are in error; therefore, NMFS is establishing them as proposed.

Comment 5. The 15 percent leeway provided to the Regional Director to make adjustments in standard PRRs without further rulemaking is inadequate.

Response. Changes in management measures sometimes have effects that are not anticipated. Notice-and-comment procedures provide the agency and the public the opportunity to determine what such effects might be. There is no limit to the change in a PRR that may be made in any one year. The Regional Director may make changes to a PRR without providing opportunity for prior public comment as long as the aggregate change in any one year does not exceed 15 percent. Changes to a PRR which, when aggregated with all other changes made during that same calendar year, are greater than 15 percent require notice and opportunity for prior public comment to ensure that all data and all possible effects are considered.

NMFS, having reviewed the purpose of this rule and comments received, has determined that it is necessary for fishery conservation and management. Standard PRRs, rather than recovery rates provided by vessel operators, are necessary to estimate the round-weight equivalent of retained species: (1) To assign vessels to fisheries for purposes of monitoring fishery specific bycatch allowances of prohibited species; (2) to monitor vessel compliance with fishery specific bycatch rate standards set forth under the VIP to reduce prohibited species bycatch rates; and (3) to calculate round-weight equivalents for purposes of assessing fees under the Research Plan. This rule is also necessary to promote compliance with regulations that prohibit pollock roe stripping as intended by the Magnuson Act.

Classification

The Alaska Region, NMFS, prepared a final regulatory flexibility analysis as part of the EA/RIR/FRFA, which concludes that this rule will have a significant economic impact on a substantial number of small entities. A copy of the EA/RIR/FRFA may be obtained from the Regional Director (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: September 29, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, a new definition of "Round-weight equivalent" is added to read as follows:

§ 672.2 Definitions.

* * * * *

Round-weight equivalent means the weight of fish calculated by dividing the weight of the primary product made from that fish by the standard product recovery rate for that primary product as listed in § 672.20(j), or, if not listed, the weight of fish calculated by dividing the weight of a primary product by the standard product recovery rate as determined using the best available evidence on a case-by-case basis.

* * * * *

§ 672.20 General limitations.

* * * * *

(i) * * *

(3) Only the following product types and standard product recovery rates may be used to calculate round-weight equivalents for pollock for purposes of this subparagraph:

Product code	Product description	Standard product recovery rate
07	Headed and gutted, western cut.	0.65
08	Headed and gutted, eastern cut.	.56
10	Headed and gutted, without tail.	.50
20	Fillets with skin & ribs	.35
21	Fillets with skin on, no ribs	.30
22	Fillets with ribs no skin	.30
23	Fillets, skinless, boneless	.21
24	Deep skin fillets	.13
30	Surimi	.16
31	Mince	.22
32	Meal	.17

* * * * *

(j) *Standard product types and standard product recovery rates (PRRs)*—(1) *Calculating round-weight equivalents from standard PRRs.* Round-weight equivalents for groundfish products shall be calculated using the product codes and standard PRRs specified in Table 1 of this section.

(2) *Adjustments to Table 1 of this section.* The Regional Director may adjust standard PRRs and product types specified in Table 1 of this section if he determines that existing standard PRRs are inaccurate or if new product types are developed.

(3) *Procedure.* Adjustments to any standard PRR listed in Table 1 that are within and including 15 percent of that standard PRR may be made without providing notice and opportunity for prior public comment. Adjustments of any standard PRR during a calendar year, when aggregated with all other adjustments made during that year, may not exceed 15 percent of the standard PRR listed in Table 1 of this section at the beginning of that calendar year and no new product type may be announced until NMFS has published notice of the proposed adjustment and/or new product type in the **Federal Register** and provided the public with at least 30 days opportunity for public comment. Any adjustment of a PRR that acts to further restrict the fishery shall not be effective until 30 days after the date of publication in the **Federal Register**. If NMFS makes any adjustment or announcement without providing notice and opportunity for prior public comment, the Regional Director will receive public comments on the adjustment or announcement for a period of 15 days after its publication in the **Federal Register**.

TABLE 1 TO § 672.20.—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND STANDARD PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(a)(1) AND/OR 50 CFR 675.20(a)(1)

FMP species	Species code	Product Code											
		1 Whole food fish	2 Whole bait fish	3 Bled	4 Gutted	6 Headed and gutted with roe	7 Headed and gutted western cut	8 Headed and gutted eastern cut	10 Headed and gutted w/o tail	11 Kirimi	12 Salted and split	13 Wings	14 Roe
Pacific cod	110	1.00	1.00	0.98	0.85	0.63	0.57	0.47	0.44	.....	0.45	.....	0.05
Arrowtooth flounder	121	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Rockfish[1]	.....	1.00	1.00	0.98	0.88	.....	0.60	0.50	.....	.....	.....	.....	.....
Sculpins	160	1.00	1.00	0.98	0.87	.....	0.50	0.40	.....	.....	.....	.....	.....
Atka mackerel	193	1.00	1.00	0.98	0.87	0.67	0.64	0.61	.....	.....	.....	.....	.....
Pollock	270	1.00	1.00	0.98	0.80	0.70	0.65	0.56	0.50	.....	.....	.....	0.04
Smelts	510	1.00	1.00	0.98	0.82	.....	0.71	.....	.....	.....	.....	.....	.....
Eulachon	511	1.00	1.00	0.98	0.82	.....	0.71	.....	.....	.....	.....	.....	.....
Capelin	516	1.00	1.00	0.98	0.89	.....	0.78	.....	.....	.....	.....	.....	.....
Sharks	689	1.00	1.00	0.98	0.83	.....	0.72	.....	.....	.....	.....	.....	.....
Skates	700	1.00	1.00	0.98	0.90	.....	.....	0.32	.....	.....	.....	0.32	.....
Sablefish	710	1.00	1.00	0.98	0.89	.....	0.68	0.63	0.50	.....	.....	.....	.....
Octopus	870	1.00	1.00	0.98	0.69	.....	.....	.....	.....	.....	.....	.....	.....
Target Species Categories Only at 50 CFR 672.20(a)													
Deep water flatfish	118	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Flathead sole	122	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Rex sole	125	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Shallow water flatfish	119	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Thornyhead rockfish	143	1.00	1.00	0.98	0.88	0.55	0.60	0.50	.....	.....	.....	.....	.....
Target Species Categories Only at 50 CFR 675.20(a)													
Other flatfish	120	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Rock sole	123	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Yellowfin sole	127	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Greenland turbot	134	1.00	1.00	0.98	0.90	0.80	0.72	0.65	0.62	0.48	.....	.....	0.08
Squid	875	1.00	1.00	0.98	0.69	.....	.....	.....	.....	.....	.....	.....	.....

[1] Rockfish means all species of *Sebastes* and *Sebastolobus*.

TABLE 1 TO § 672.20 (CONTINUED).—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND STANDARD PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(A)(1) AND/OR 675.20(A)(1)

FMP species	Species code	Product code												
		15 Pectoral girdle	16 Heads	17 Cheeks	18 Chins	19 Belly	20 Fillets: With skin and ribs	21 Fillets: Skin on no ribs	22 Fillets: With ribs no skin	23 Fillets: Skinless/ boneless	24 Fillets: Deep skin	30 Surimi	31 Mince	32 Meal
Pacific cod	110	0.05	.....	0.05	.....	0.01	0.45	0.35	0.25	0.25	.....	0.15	0.50	0.17
Arrowtooth flounder	121	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Rockfish	.....	.....	0.15	0.05	0.05	0.10	0.40	0.30	0.33	0.25	.....	.....	.....	0.17
Sculpins	160	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17
Atka mackerel	193	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.15	.....	0.17
Pollock	270	.....	0.15	.....	.....	.....	0.35	0.30	0.30	0.21	0.13	[1]0.16 [2]0.17	0.22	0.17
Smelts	510	.....	.....	.....	.....	.....	.....	0.38	.....	.....	.....	.....	.....	0.22
Eulachon	511	.....	.....	.....	.....	.....	.....	0.38	.....	.....	.....	.....	.....	0.22
Capelin	516	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.22
Sharks	689	.....	.....	.....	.....	.....	.....	0.30	0.30	0.25	.....	.....	.....	0.17
Skates	700	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17
Sablefish	710	.....	.....	0.05	.....	.....	0.35	0.30	0.30	0.25	.....	.....	.....	0.22
Octopus	870	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17

TABLE 1 TO § 672.20 (CONTINUED).—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND STANDARD PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(A)(1) AND/OR 675.20(A)(1)—Continued

FMP species	Species code	Product code												
		15 Pectoral girdle	16 Heads	17 Cheeks	18 Chins	19 Belly	20 Fillets: With skin and ribs	21 Fillets: Skin on no ribs	22 Fillets: With ribs no skin	23 Fillets: Skinless/ boneless	24 Fillets: Deep skin	30 Surimi	31 Mince	32 Meal
Target Species Categories Only at 50 CFR 672.20(a)														
Deep water flatfish ..	118	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Flathead sole	122	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Rex sole	125	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Shallow water flatfish	119	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Thornyhead rockfish	143	.....	0.20	0.05	0.05	0.05	0.40	0.30	0.35	0.25	.....	.....	.....	0.17
Target Species Categories Only at 50 CFR 675.20(a)														
Other flatfish	120	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Rock sole	123	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Yellowfin sole	127	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	0.18	.....	0.17
Greenland Turbot	134	.....	.....	.....	.....	.....	0.32	0.27	0.27	0.22	.....	.....	.....	0.17
Squid	875	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.17

[1] Standard pollock surimi rate during January through June.
[2] Standard pollock surimi rate during July through December.

TABLE 1 TO § 672.20 (CONTINUED).—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND STANDARD PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(a)(1) AND 50 CFR 675.20(a)(1)

FMP species	Species code	Product code							
		33 Oil	34 Milt	35 Stomachs	36 Mantles	37 Butterfly backbone removed	96 Decomposed fish	98 At-sea discards	
Pacific cod	110	.....	.....	.....	.....	0.43	0.00	1.00	
Arrowtooth flounder	121	.....	.....	.....	.....	.....	0.00	1.00	
Rockfish	.....	.....	.....	.....	.....	.....	0.00	1.00	
Sculpins	160	.....	.....	.....	.....	.....	0.00	1.00	
Atka mackerel	193	.....	.....	.....	.....	.....	0.00	1.00	
Pollock	270	.....	.....	.....	.....	0.43	0.00	1.00	
Smelts	510	.....	.....	.....	.....	.....	0.00	1.00	
Eulachon	511	.....	.....	.....	.....	.....	0.00	1.00	
Capelin	516	.....	.....	.....	.....	.....	0.00	1.00	
Sharks	689	.....	.....	.....	.....	.....	0.00	1.00	
Skates	700	.....	.....	.....	.....	.....	0.00	1.00	
Sablefish	710	.....	.....	.....	.....	.....	0.00	1.00	
Octopus	870	.....	.....	.....	0.85	1.00	0.00	1.00	
Target Species Categories Only at 50 CFR 672.20(a)									
Deep water flatfish	118	.....	.....	.....	.....	.....	0.00	1.00	
Flathead sole	122	.....	.....	.....	.....	.....	0.00	1.00	
Rex sole	125	.....	.....	.....	.....	.....	0.00	1.00	
Shallow water flatfish	119	.....	.....	.....	.....	.....	0.00	1.00	
Thornyhead rockfish	143	.....	.....	.....	.....	.....	0.00	1.00	
Target Species Categories Only at 50 CFR 675.20(a)									
Other flatfish	120	.....	.....	.....	.....	.....	0.00	1.00	
Rock sole	123	.....	.....	.....	.....	.....	0.00	1.00	
Yellowfin sole	127	.....	.....	.....	.....	.....	0.00	1.00	

TABLE 1 TO § 672.20 (CONTINUED).—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND STANDARD PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(a)(1) AND 50 CFR 675.20(a)(1)—Continued

FMP species	Species code	Product code						
		33 Oil	34 Milt	35 Stomachs	36 Mantles	37 Butterfly backbone removed	96 Decomposed fish	98 At-sea discards
Greenland turbot	134	.....	.....	.....	.....	.....	0.00	1.00
Squid	875	.....	.....	.....	0.75	1.00	0.00	1.00

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. In § 675.2, a new definition of "Round-weight equivalent" is added to read as follows:

§ 675.2 Definitions.

* * * * *

Round-weight equivalent means the weight of fish calculated by dividing the weight of the primary product made from that fish by the standard product recovery rate for that primary product as listed in § 672.20(j), or, if not listed, the weight of fish calculated by dividing the weight of a primary product by the standard product recovery rate as determined using the best available evidence on a case-by-case basis.

* * * * *

6. In § 675.20, paragraph (j)(4) is removed, paragraphs (j)(5)–(j)(7) are redesignated as paragraphs (j)(4)–(j)(6), paragraph (j)(3) is revised, and a new paragraph (k) is added to read as follows:

§ 675.20 General limitations.

* * * * *

(j) * * *

(3) Only the following product types and standard product recovery rates may be used to calculate round-weight equivalents for pollock for purposes of this subparagraph:

Product code	Product description	Standard product recovery rate
07	Headed and gutted, western cut.	0.65
08	Headed and gutted, eastern cut.	.56
10	Headed and gutted, without tail.	.50
20	Fillets with skin & ribs	.35
21	Fillets with skin on, no ribs	.30
22	Fillets with ribs no skin	.30
23	Fillets, skinless, boneless .	.21
24	Deep skin fillets	.13
30	Surimi	.16
31	Mince	.22
32	Meal	.17

* * * * *

(k) *Standard product types and standard product recovery rates (PRRs).* Standard product types and standard PRRs pertaining to this section are governed by provisions set forth in § 672.20(j).

[FR Doc. 94–24637 Filed 10–4–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 192
Wednesday, October 5, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 843

RIN: 3206–AF91

Federal Employees Retirement System—Computation of the Basic Employee Death Benefit for Customs Officers

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations concerning the use of overtime and premium pay in determining the final annual rate of basic pay of customs officers under the Federal Employees Retirement System (FERS). These regulations would establish the methodology (similar to the one that OPM uses for other flexible schedule employees) that the employing agency will use to compute customs officers' "final annual rate of basic pay" for determining FERS "basic employee death benefit." The regulations are necessary to implement the changes in the statutory definition of basic pay under FERS made by section 13812 of the Omnibus Budget Reconciliation Act of 1993.

DATES: Comments must be received on or before December 5, 1994.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement Policy Development; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Section 13812 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, amended section 8331(3) of title 5, United States Code, the definition of basic pay under the Civil Service Retirement System (CSRS), to include, as basic pay for CSRS computations, certain overtime pay for customs officers. Section 8401(4) of title 5, United States Code, provides that the CSRS definition of basic pay in section 8331(3) applies to the Federal Employees Retirement System (FERS). For customs officers, basic pay will include the regular pay under the general schedule, any applicable locality pay, and allowable overtime pay up to $12,500 per fiscal year. Basic pay is used to compute final salary for the basic employee death benefit under FERS.

For determining final salary, the employing agency will use a methodology similar to the one used for determining the "final annual rate of basic pay" of intermittent employees for the FERS basic employee death benefit established in § 843.102 of title 5, Code of Federal Regulations. The employing agency will determine the total number of hours for which the employee was paid two-times-hourly-rate overtime and the total number of hours for which the employee was paid three-times-hourly-rate overtime during the 52-week workyear ending the pay period before separation. The employing agency will then determine the amount of overtime pay that the employee would have received during the 52-week workyear if that overtime were paid at two or three times the employee's hourly rate (regular general schedule pay rate plus locality pay) at the time of death. The amount of allowable overtime is the lesser of the amount that would have been paid during that 52-week workyear using the employee's hourly rate (times the appropriate multiplier) at the time of separation or $12,500. The final salary is equal to the allowable overtime computed under the previous sentence, plus the final annual general schedule pay, plus locality pay.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects in 5 CFR Part 843

Administrative practice and procedure, Claims, Disability benefits, Government employees, Intergovernmental relations, Pensions, Reporting and recordkeeping, Retirement.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM proposes to amend 5 CFR part 843 as follows:

PART 843—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DEATH BENEFITS AND EMPLOYEE REFUNDS

1. The authority citation for part 843 continues to read as follows:

Authority: 5 U.S.C. 8461; §§ 843.205, 843.208 and 843.209 also issued under 5 U.S.C. 8424; § 843.309 also issued under 5 U.S.C. 8442; § 843.406 also issued under 5 U.S.C. 8441.

2. In the definition of "final annual rate of basic pay" in section 843.102, paragraph (d) is added to read as follows:

§ 843.102 Definitions

* * * * *

Final annual rate of basic pay * * *

(d) The annual pay for customs officers is the sum of the employee's general schedule pay, locality pay, and the lesser of—

(1) Two times the employee's final hourly rate of pay times the number of hours for which the employee was paid two times salary as compensation for overtime inspectional service under section 5(a) of the Act of February 11, 1911 (19 U.S.C. 261 and 267) plus three times the employee's final hourly rate of pay times the number of hours for which the employee was paid three times salary as compensation for overtime inspectional service under section 5(a) in the 52-week work year immediately preceding the end of the last pay period in which the employee was in pay status; or

(2) $12,500.

* * * * *

[FR Doc. 94–24455 Filed 10–4–94; 8:45 am]

BILLING CODE 6325–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 150

[Docket No. PRM–150–3]

Measurex Corporation, Receipt of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Measurex Corporation. The petition has been docketed by the Commission and has been assigned Docket No. PRM–150–3. The petitioner requests that the NRC amend its regulations governing Agreement State regulation of byproduct material to require Agreement States to notify the NRC of all proposed and completed regulatory actions. The petitioner also requests that the NRC amend its regulations governing rulemaking to require the NRC to publish Agreement State notices of proposed and completed rulemaking. The petitioner believes that these amendments would alert NRC and Agreement State licensees of applicable Agreement State requirements and permit them to more fully participate in the rulemaking process.

DATES: Submit comments by December 19, 1994. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) received a petition for rulemaking dated April 7, 1994, submitted by the Measurex Corporation. The petition was docketed as PRM–150–3 on April 12, 1994. The petitioner requests that the NRC amend its regulations in 10 CFR part 150 that govern Agreement State regulation of byproduct material. Specifically, the petitioner is seeking an amendment to 10 CFR 150.31 that will require Agreement States to notify the NRC of proposed and completed changes to that State's regulations. The petitioner is also seeking an amendment to 10 CFR part 2 that will require the NRC to publish Agreement State notices of proposed and completed rulemaking in the **Federal Register**.

The petitioner notes that current NRC requirements contained in 10 CFR 2.804 through 10 CFR 2.807 establish a procedure for the publication of proposed changes, participation by interested persons, and notification of changes, and believes that a less detailed set of rulemaking and notification procedures is specified for Agreement States in 10 CFR 150.31. The petitioner claims that the current rulemaking and notification procedure contained in 10 CFR 150.31 fails to provide a mechanism for persons located outside of any particular Agreement State to learn about proposed changes in that State's regulations. The petitioner believes that the legislative intent of 10 CFR 150.31 is to provide a mechanism for interested persons to participate in the rulemaking process. However, the petitioner claims that because there is no current notification procedure required for Agreement States, the petitioner and other persons do not have ample opportunity to participate in discussion of proposed rules.

The petitioner states that under both its specific license for device distribution issued by the Agreement State of California and the general license issued by other Agreement States, it is required to provide generally licensed device recipients with a copy of the applicable Agreement State regulations. The petitioner also indicates that although it makes a substantial effort to learn of proposed regulatory changes and to maintain current copies of NRC and Agreement State regulations, it is not always notified of actual changes that may directly affect it and its customers in Agreement States. The petitioner believes that the proposed amendments to 10 CFR Parts 2 and 150 would alert NRC and Agreement State licensees to all relevant Agreement State requirements and permit them to more fully participate in the rulemaking process.

The NRC is soliciting public comment on the petition for rulemaking submitted by Measurex Corporation that requests the changes to the regulations in 10 CFR Parts 2 and 150 as discussed below.

The Petitioner

The petitioner is a manufacturer, distributor, and supplier of service for process control sensors used by NRC licensees throughout the United States. The petitioner states that it and its customers are directly affected by regulations adopted by the NRC and Agreement States. The petitioner also states that both its specific license for device distribution issued by California, an Agreement State, and other Agreement State licenses require it to provide generally licensed recipients a copy of the applicable Agreement State regulations. For these reasons, the petitioner claims that it makes a considerable effort to learn of proposed regulatory changes and to maintain current copies of NRC and Agreement State regulations.

The petitioner indicates that it is submitting this petition for rulemaking to amend 10 CFR Parts 2 and 150 because it believes that the current regulations completely fail to provide a mechanism for persons located outside any particular Agreement State to learn about proposed and completed changes to that State's regulations. The petitioner believes that because there is no adequate mechanism to keep NRC licensees aware of current Agreement State regulations, it is unable to fully participate in discussion of proposed rules and is often unaware of actual regulatory changes that directly affect it and its customers in Agreement States.

Discussion of the Petition

The petitioner has submitted this petition for rulemaking because it believes that it is adversely affected by the current regulations that do not provide an adequate mechanism for NRC licensees to learn about proposed and adopted changes in applicable Agreement State regulations. The petitioner states that although the current NRC regulations in 10 CFR 2.804 through 2.807 establish a procedure for the notification and publication of regulatory changes and participation by interested persons, it believes that a less detailed set of rulemaking and notification procedures

is specified for Agreement States in 10 CFR 150.31.

The petitioner's primary concern is that it and other NRC licensees are not always notified of proposed and completed changes in Agreement State regulations that can directly affect themselves and their customers in Agreement States. The petitioner is also concerned that because it is often not aware of Agreement State regulatory actions, it does not have the opportunity to fully participate in the rulemaking process as is intended by NRC regulations. As part of its petition for rulemaking, the petitioner has included copies of various correspondence with Agreement State radiation control boards and the NRC, and cites specific cases in the Agreement States of Oregon and Texas that it believes will illustrate that the current rules are unduly burdensome, deficient, and in need of strengthening. For example, in Oregon, regulatory changes are proposed that would eliminate the general license authorizing the petitioner to install, transfer, demonstrate, or provide service and would require the petitioner to obtain a specific license from Oregon in order to conduct business.

If these proposed regulations are adopted, the petitioner states that it will be able to ship sensors to a customer in Oregon only after confirming that the customer has an appropriate specific license. The petitioner is concerned not only that the proposed regulations would impose additional burdens and costs on it and its customers in conducting business in Oregon, but also that it was not provided ample opportunity to comment on the proposed rules or to participate in the rulemaking process.

Although the petitioner attempted to learn about any proposed or adopted regulatory changes by writing to the Oregon Radiation Control Section on several occasions between June 1991 and January 1994, it did not receive a response. The lack of response led the petitioner to believe that Oregon had not modified its 1987 radiological control regulations even though the current version of the Oregon *Administrative Rules for the Control of Radiation* was adopted in 1991. The petitioner stated that it only became aware of the changes in Oregon's notification requirements in February 1994 when informally contacted by an out-of-state health physics colleague.

The petitioner also described a case in which it did not learn of regulatory modifications adopted by the Agreement State of Texas in 1993 until after the rules became effective. These regulations govern distribution and service involving generally licensed devices. The petitioner claims that the new requirements are costly and administratively burdensome and again expressed the concern that it was not able to participate in discussions of proposed rules that affect it and its customers before the rules became effective.

The petitioner acknowledges that although some State's radiation control agencies are conscientious in notifying out-of-state distributors or service groups about proposed and completed regulatory changes, many do not make such an effort. For these reasons, the petitioner indicates that it and other firms have no way of knowing when copies of a State's regulations are no longer valid and, consequently, have no opportunity to participate in the rulemaking process. The petitioner stated that its efforts to gain information regarding Agreement State regulatory changes are costly, time-consuming, and often ineffective.

To alleviate this situation, the petitioner proposes that 10 CFR 150.31 be amended to require Agreement States to notify the NRC of any proposed regulatory actions and that 10 CFR Part 2 be amended to require the NRC to publish the Agreement State notices of proposed regulatory actions in the **Federal Register**.

The NRC staff would like to inform the readers that 10 CFR 150.31 applies only to 11e(2) byproduct material (tailings and other wastes generated from the milling of ores primarily for their source material content) and reflects statutory requirements in the Uranium Mill Tailings Radiation Control Act of 1978, as amended. Similar requirements could be developed to apply to other byproduct material. In order to avoid confusion with the requirements for 11e(2) byproduct material, the proper location for these new requirements would need to be considered in the development of any new section in Part 150.

The Petitioner's Proposed Amendment

The petitioner requests that 10 CFR Parts 150 and 2 be amended to overcome the problems the petitioner has itemized and recommends the following revisions to the regulations:

1. The petitioner proposes that § 150.31 be amended by redesignating existing paragraph (c) as paragraph (d), redesignating existing paragraph (d) as paragraph (e), and adding a new paragraph (c) to read as follows:

Section 150.31 Requirements for Agreement State Regulation of Byproduct Material

* * * * *

(c) After [date], in the licensing and regulation of byproduct material, as defined in § 150.3(c)(2) of this part, or of any activity which results in the production of such byproduct material, an Agreement State shall require compliance with procedures which:

(1) Include the requirements of paragraph (b) of this section, and

(2) In the case of rulemaking also include:

(i) Except as provided by paragraph (c)(2)(iv) of this section, when it proposes to adopt, amend, or repeal a regulation, shall submit notice of the proposed change to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Docketing and Service Branch.

(ii) The notice will include:

(A) Either the terms or substance of the proposed rule, or a specification of the subjects and issues involved;

(B) The manner, time, and place within which interested members of the public may comment, and a statement of where and when copies of such comments may be examined.

(C) The authority under which the regulation is proposed; and

(D) The time, place, and nature of the public hearing, if any.

(iii) The notice required in paragraph (c)(2)(i) of this section will be made not less than [number to be determined] days prior to the time fixed for hearing, if any, unless the Agreement State for good cause stated in the notice provides otherwise.

(iv) The notice and comment provisions contained in paragraph (c)(2)(i), (ii), and (iii) of this section will not be required to be applied—

(A) To interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) When the Agreement State for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest, and are not required by statute. This finding, and the reasons therefor, will be incorporated into any rule issued without notice and comment for good cause.

(v) The Agreement State shall provide for a 30-day post-promulgation comment period for—

(A) Any rule adopted without notice and comment under the good cause exception in paragraph (c)(2)(iv)(B) of this section where the basis is that notice and comment is "impracticable" or "contrary to the public interest;" or

(B) Any interpretive rule, or general statement of policy adopted without notice and comment under paragraph (c)(2)(iv)(A) of this section, except for those cases for which the Agreement State finds that such procedures would serve no public interest, or would be so burdensome as to outweigh any foreseeable gain.

(vi) For any post-promulgation comments received under paragraph (c)(2)(v) of this section, the Agreement State shall submit a statement to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Docketing and Service Branch. This statement shall contain an evaluation of the significant comments and any revisions of the rule or policy statement made as a result of the comments and their evaluation.

(vii) The Agreement State will afford interested persons an opportunity to participate through the submission of statements, information, opinions, and arguments in the manner stated in the notice. The Agreement State may grant additional reasonable opportunity for the submission of comments.

(viii) The Agreement State may hold informal hearings at which interested persons may be heard, adopting procedures which in its judgment will best serve the purpose of the hearing.

(ix) When it has adopted, amended, or repealed a regulation, the Agreement State will submit notice of the action to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Docketing and Service Branch.

(x) The notice of adoption, amendment, or repeal of a regulation provided by an Agreement State to fulfill the requirements of paragraph (c)(2)(ix) of this section will specify the effective date and include a concise general statement of the basis and purpose of the change. Such notice will be made not less than [number of days to be determined] days prior to the effective date, unless the Agreement State directs otherwise on good cause found and included in the notice of rulemaking provided in fulfillment of paragraph (c)(2)(x) of this section.

* * * * *

2. The petitioner proposes that 10 CFR Part 2 be amended to add a § 2.810 to read as follows:

Section 2.810 Notice of Proposed Rulemaking by Agreement States

(a) When the Commission, in fulfillment of the requirements of § 150.31(c)(2)(i) of this chapter, receives Agreement State notice of a proposal to adopt, amend, or repeal a regulation, it will cause the notice to be published in the **Federal Register**. The publication of this notice will be made not less than fifteen (15) days prior to the time fixed for hearing, if any.

(b) When the Commission, in fulfillment of the requirements of § 150.31(c)(2)(vi) of this chapter, receives an Agreement State statement of post-promulgation comments, it will cause the statement to be published in the **Federal Register**.

(c) When the Commission, in fulfillment of the requirements of § 150.31(c)(2)(ix) of this chapter, receives an Agreement State notice of the adoption, amendment, or repeal of regulations, it will cause the notice, including the effective date, to be published in the **Federal Register**.

Dated at Rockville, Maryland, this 30th day of September, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94-24652 Filed 10-4-94; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1994—14]

Communications Disclaimer Requirements

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking comments to help determine whether changes in its regulations governing disclaimers on campaign communications are warranted. The current rules require a disclaimer notice on communications by any person that expressly advocate the election or defeat of a clearly identified candidate, or solicit contributions, through any form of general public political advertising. One proposed change would create a presumption that communications by authorized political committees or political party committees that refer to a clearly identified federal candidate are express advocacy, thereby triggering the disclaimer requirement. Other modifications would clarify that oral disclaimers are required under appropriate circumstances; clarify how these requirements apply to coordinated party expenditures; broadly define "direct mail" in this context; require a disclaimer on all communications included in a package of materials that are intended for separate distribution; and clarify the meaning of "clear and conspicuous" as that term is used in these rules.

DATES: Comments must be received on or before December 5, 1994. Persons wishing to testify at a hearing on these rules should so indicate in their written comments. If sufficient requests to testify are received, the Commission will announce the date of the hearing in a separate notice.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act ["FECA" or "the Act"] at 2 U.S.C. 441d(a) requires a disclaimer on communications by any person that expressly advocate the election or defeat of a clearly identified federal candidate, or solicit contributions, through any form of general public political advertising. The Commission is proposing to revise the implementing regulations, found at 11 CFR 110.11, to address issues that have arisen since the rules were last amended, and to clarify their scope and applicability.

New Definition

Proposed 11 CFR 110.11(a) includes a definition for the term "direct mailing." For purposes of these requirements, "direct mailing" would be broadly defined to include any number of substantially similar pieces of mail, except for mailings of fifty pieces or less, by any person. The definition would exclude permissible activities by a corporation or labor organization communicating with a restricted class under 11 CFR 114.3 or 114.5, because such activities do not involve general public political advertising.

Express Advocacy

The current disclaimer requirements were enacted as part of the 1976 amendments to the Federal Election Campaign Act. They replaced those contained in former 18 U.S.C. 612, a broadly-worded criminal code provision that required identifying information to be included on any political statement published, mailed or distributed on behalf of a federal candidate.

The present statutory and regulatory language applies to communications that expressly advocate the election or defeat of a clearly identified federal candidate, a standard the Supreme Court held in *Buckley* v. *Valeo*, 424 U.S.

1, 80 (1976), to be constitutionally mandated for the disclosure of expenditures by individuals and groups that are not candidates or political committees. 424 U.S. at 80. However, neither *Buckley* nor other pertinent case law prohibits the imposition of further requirements on communications made by candidates and political committees. It is the Commission's experience that an inordinate amount of Commission time and resources are diverted to the question of whether a campaign mailing or advertisement paid for by a candidate constituted "express advocacy" and therefore required a disclaimer.

Since political committees are in the business of electing candidates to political office, the Commission believes it is appropriate for them to be subject to a different standard under section 441d(a) in certain circumstances. The Commission is therefore proposing to include in the regulatory text a presumption that all communications by authorized political committees, or by party political committees, that refer to a clearly identified federal candidate contain express advocacy, and thus trigger the section 441d(a) disclaimer requirements. This interpretation would further a major goal of the FECA, that of more complete disclosure on political communications directed to the general public. It would also eliminate problems that have arisen in determining whether specific communications contain "express advocacy" in this context.

This presumption would be rebuttable, since certain communications, e.g., those limited to one candidate's placing a newspaper ad offering another sympathy on a bereavement, are clearly not election advocacy. The Commission welcomes comments on the advisability of adopting this presumption, as well as suggested alternatives to and/or specific exemptions from the presumption.

Alternatively, the Commission is soliciting comments on whether the statutory language should be interpreted to require disclaimers on all communications by political committees, whether or not they include express advocacy. This, too, would further the disclosure aims of the Act, as well as eliminate possible problems in determining whether the "express advocacy" standard has been met.

Party Political Committee Communications

The Commission is also seeking comments on whether the required authorization statement should be dropped or modified for communications and solicitations that refer to a clearly identified federal candidate, made by political party committees prior to the time the party's candidate is nominated. There are several possible approaches to this issue. One option would be for such communications to state only who paid for the communication. Please note that this would not change the Commission's long-standing conclusion that such communications may count against the committee's coordinated party expenditure limits.

If a state or national party committee chooses not to make the coordinated expenditures permitted by section 441a(d), it may assign its right to make those expenditures to a designated agent, such as the senatorial campaign committee of the party. *FEC* v. *Democratic Senatorial Campaign Committee*, 454 U.S. 27 (1981). The proposed rules would clarify that the disclaimer on a communication made as a coordinated party expenditure should identify the committee that made the actual expenditure as the person who paid for the communication, regardless of whether that committee was acting as a designated agent or in its own capacity.

Unauthorized Committee Solicitations That Mention Candidates

While the Act requires communications by unauthorized committees to state both who paid for the communication and whether it was authorized by any candidate or candidate's committee, the text of the current rule does not include the second requirement for unauthorized committee solicitations. The proposed rule would clarify that an authorization statement would be required if the solicitation refers to a clearly identified federal candidate.

The "Clear and Conspicuous" Requirement

The proposal would provide guidance on the meaning of the term "clear and conspicuous" as that phrase is used in current 11 CFR 110.11(a)(1) and proposed paragraph 110.11(c). The Commission recently completed a rulemaking revising its regulations on the FECA's requirement that treasurers of political committees exercise best efforts to obtain, maintain, and report the complete identification of each contributor whose contributions aggregate more than $200 per calendar year. 2 U.S.C. 432(i), 11 CFR 104.7. See 58 FR 57725 (Oct. 27. 1993). For purposes of that rulemaking, a required notice to contributors is stated not to be "clear and conspicuous" if it is in small type in comparison to the remainder of the material, or if the printing is difficult to read or if the placement is easily overlooked. 11 CFR 104.7(b)(1), 58 FR 57729. This NPRM proposes the same language with regard to the disclaimers covered by this section.

Oral Disclaimers

The draft rules would clarify that oral communications and solicitations must meet the same disclaimer requirements as their written counterparts. The Act does not distinguish between written and oral communications. The Commission held in Advisory Opinion 1988–1 that oral disclaimers were not required as part of phone bank campaign communications with express advocacy content. The draft rules would supersede this opinion. This approach is consistent with the Commission's recently-adopted "best efforts" rules, which require at 11 CFR 104.7(b)(2) that both written and oral follow-up requests for contributor identification information include a required statement.

Packaged Materials

The proposal would clarify that a separate disclaimer is required on all communications included in a package of materials if the communications are intended for separate public distribution. In the past, questions have arisen as to whether a single disclaimer per package would satisfy the purposes of this requirement. All items intended for separate distribution (e.g., a poster included in a package of campaign handouts) would be covered by this requirement.

Exceptions

The current rules at paragraph 110.11(a)(2) exempt from the disclaimer requirement small items, such as pins, buttons, or pens; and "impractical" items, such as watertowers and skywriting. The Commission is proposing in paragraph (b)(1)(i) to add to these exempted items checks, receipts and similar items of minimal value that do not contain a political message and that are used for purely administrative purposes. Also, the question has at times arisen as to whether the "impractical" exception applies to wearing apparel, such as T-shirts or baseball caps, that contain a political message. This Notice proposes no language requiring a disclaimer on such material. However, if commenters believe the Commission should consider a disclaimer requirement for such materials, the Commission would encourage suggestions for practical application of such a requirement.

Disbursements by Candidates or Party Committees for Exempt Activity

The Commission is proposing language that would require a disclaimer on a communication by a candidate or party committee that qualifies as an exempt activity though on behalf of a clearly identified federal candidate. This would ensure that a disclaimer is included on all communications, including those which qualify as exempt activities by state and local party committees or candidates under the Act. See 2 U.S.C. 431(8)(B)(v), (x), (xi), and (xii).

This proposed amendment is consistent with the Act's interest in full disclosure of who authorized and paid for campaign communications. The Commission welcomes comments on this approach.

Comments are invited on any of the specific amendments discussed above, as well as any related issues that might relate to this topic.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that any affected entities are already required to comply with the Act's requirements in this area.

List of Subjects in 11 CFR Part 110

Campaign funds, Political candidates, Political committees and parties.

For reasons set out in the preamble it is proposed to amend Subchapter A, chapter I of Title 11 of the Code of Federal Regulations as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, and 441h.

2. Part 110 would be amended by revising section 110.11 to read as follows:

§ 110.11 Communications; advertising.

(a) *Definition.* For purposes of paragraph (b)(1) of this section only, "direct mailing" includes any number of substantially similar pieces of mail but does not include:

(1) a mailing of fifty pieces or less by any person; or

(2) mailings by a corporation or labor organization to the corporation's or labor organization's restricted class under 11 CFR 114.3 or 114.5.

(b)(1) (i) *General Rule.* Except as otherwise provided in this section, whenever any person makes an expenditure for the purpose of financing a communication that expressly advocates the election or defeat of a clearly identified candidate or that solicits any contribution, through any broadcast station, phone bank, newspaper, magazine, outdoor advertising facility, poster, yard sign, direct mailing or other form of general public political advertising, that communication or solicitation shall clearly state who paid for it. If authorized by a candidate, an authorized committee of a candidate or an agent thereof, but paid for by some other person, the communication or solicitation shall clearly state that it is authorized by such candidate, authorized committee, or agent. If not authorized by a candidate, authorized committee of a candidate or its agent, the communication or solicitation shall clearly state that it is not authorized by any candidate, candidate's committee, or agent. For purposes of this paragraph, it is presumed that a communication or solicitation by a political committee that refers to a clearly identified federal candidate contains express advocacy.

(ii) *Exceptions.* The requirements of paragraph (b)(1)(i) of this section do not apply to:

(A) bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed;

(B) skywriting, watertowers or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable;

(C) checks, receipts and similar items of minimal value which do not contain a political message and which are used for purely administrative purposes; or

(D) communications by a corporation or labor organization to the corporation's or labor organization's restricted class under 11 CFR 114.3 and 114.5.

(2) For a communication or solicitation paid for by a party committee pursuant to 2 U.S.C. 441a(d), the disclaimer required by paragraph (b)(1)(i) of this section shall identify the committee that makes the expenditure as the person who paid for the communication, regardless of whether the committee was acting in its own capacity or as the designated agent of another committee.

(3) A solicitation other than one covered by paragraph (b)(1)(ii)(D) of this section by an unauthorized political committee that does not refer to a clearly identified federal candidate need only state who paid for it.

(4) For purposes of paragraphs (b)(1)(i) of this section, the term "expenditure" includes a communication by a candidate or party committee that qualifies as an exempt activity under 11 CFR 100.8(b) (10), (16), (17), or (18).

(c) *Placement of Disclaimer.* The disclaimers specified in paragraph (b)(1)(i) of this section shall be presented in a clear and conspicuous manner, to give the reader, observer or listener adequate notice of the identity of the person or committee that paid for, and, where required, that authorized the communication. A disclaimer is not clear and conspicuous if it is in small type in comparison to the rest of the printed material, or if the printing is difficult to read or if the placement is easily overlooked.

(1) The disclaimer need not appear on the front or cover page of the communication as long as it appears within the communication, except on communications, such as billboards, that contain only a front face.

(2) Each communication that is included in a package of materials but that is also intended for separate public distribution shall include a disclaimer.

(d) (1) *Newspaper or magazine space.* No person who sells space in a newspaper or magazine to a candidate, an authorized committee of a candidate, or an agent of the candidate, for use in connection with the candidate's campaign for nomination or for election, shall charge an amount for space which exceeds the comparable rate for the space for non-campaign purposes.

(2) For purposes of this section, "comparable rate" means the rate charged to a national or general rate advertiser, and shall include discount privileges usually and normally available to a national or general rate advertiser.

Dated: September 30, 1994

Trevor Potter,

Chairman.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB46

Assessments

AGENCY: Federal Deposit Insurance Corporation.